IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 36105 of 2007(W)

PETITIONER:

K.P.SADULI, S/O K.MUHAMMED,
KEELATH PURAYIL HOUSE, PROPRIETOR,
SADHU WOOD INDUSTRIES, KOLACHERY P.O.,
KANNUR DISTRICT.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:

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1. KUTIATTOOR GRAMA PANCHAYATH,
CHATTUKAPPARA P.O.,
KANNUR DISTRICT-670592,
REPRESENTED BY ITS SECRETARY.

2. P.MUKUNDAN, PRESIDENT,
KUTTIATTOOR GRAMA PANCHAYATH,
CHATTUKAPPARA P.O.,
KANNUR DISTRICT-670592.

BY ADV. SRI.LAL GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.36105/2007

APPENDIX:

PETIITONER'S EXTS:

EXT.P1: TRUE COPY OF THE INTERIM ORDER DATED 22-3-2006 IN WPC.6717/06.

EXT.P2: TRUE COPY OF THE COMMISSION REPORT DATED 23-5-2006.

EXT.P3: TRUE COPY OF THE LETTER DATED 7-12-2006 OF THE D.F.O.KANNUR TO THE PETITIONER.

EXT.P4: TRUE COPY O THE JOINT PETITION FOR COMPROMISE DATED 18-10-2007.

EXT.P5: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIOENR BEFORE THE BOARD MEMBERS OF KUTTIYATTOOR GRAMA PANCHYAATH.

RESPONDENTS' EXTS:

EXT.R1(A) TRUE PHOTOSTAT COPY OF GOVERNMENT CIRCULAR NO. 24136/RA1/07

EXT.R1(B) TRUE PHOTOSTAT COPY OF THE COMMUNICATION ISUED OT THE PETITIONER.

KS.

TRUE COPY

P.S.TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C)No.36105 OF 2007

DATED THIS THE 18th December , 2007

J U D G M E N T

The petitioner who is proprietor of wood based industry by name Sadhu Wood Industries within the area of the first respondent Panchayath seeks a direction to the respondent, viz. functionaries of the Panchayath not to prevent the petitioner from completing the construction of the shed in connection with his industry,Sadhu Wood Industries. The petitioner contends on the basis of Ext.P2 commissioner's report that he had started construction of the shed in question as far back as on 19-5-2006. Therefore, G.O.MS.150/2007/LSGD dated 6-6-2007 by which the provisions of the Kerala Municipality Building Rules was extended to Panchayaths will not be applicable to the constructions taken up by him. The Panchayath has filed a detailed counter affidavit and along with that counter affidavit the Panchayat has produced Ext.R1(a) circular issued by the Government on 20-6-2007 pursuant to the Government order dated 6-6-2007. The Panchayat also relies on Ext.R1(b) order issued subsequently to the petitioner and contents that in the light of Ext.R1 (b) the petitioner is not entitled to continue the construction unless he takes out a building permit in terms of the Kerala Municipality Building

Rules.

2. Heard both sides.

3. In my view, this Court need be concerned in this case only in the question as to whether it is necessary for the petitioner to take out a permit for the construction of the shed in question in terms of the Kerla Municipality Building Rules. Apart from Ext.R1(a), the Government has issued a further circular No.24136/1/RA/1/07 LSGD dated 25-7-2007. A careful reading of the above circular dated 25-7-2007 will show that if the constructions had commenced prior to 6-6-2007, it will not be necessary for the persons carrying out the constructions to submit plans for approval by the Panchayat and to take out permit for carrying out the constructions. Of course, as stated in Clause (2) of Part II of Ext.R1(a) circular the Secretary of the Panchayat will be obliged even in respect of constructions which had commenced prior to 6-6-2007 to collect relevant information regarding location plan, site plan, elevation, plinth area etc. Sri. Lal George, learned counsel for the first respondent would submit that what the Panchyath had directed the petitioner was only to furnish the relevant information to the Panchayat so that the same can be collected for the purpose of the two circulars. On a reading of Ext.R1

(b) it is seen that the committee of the Panchayat has resolved as per resolution No.228/07 dated 29-11-2007 that it is obligatory that the petitioner shall take out a building permit for the construction in question since the constructions are separate constructions and not part of any existing constructions. The question is whether the petitioner had started the construction prior to 6-6-2007. Prima facie it appears to me that the construction was commenced by the petitioner prior to 19-5-2006 which is prior to the cut off date of 6-6-2007. The petitioner is, therefore, directed to place a copy of Ext.P2 commissioner's report and any other material which may show that the petitioner has actually started the construction prior to 6-6-2007 before the Secretary of the Panchayath. If the materials produced by the petitioner including Ext.P2 commissioner's report shows that the construction of the shed in question was commenced by the petitioner prior to 6-6-2007, the Secretary of the Panchayath shall pass orders permitting the petitioner to continue with the construction subject to the other conditions in Ext.R1(a) circular and the subsequent circular of the Government dated 25-7-2007. The petitioner will produce the material before the Secretary of the Panchayath at the earliest and once the materials are produced, the Secretary of the Panchayath will

finalise the issue without further delay, at any rate within two weeks of receiving the materials and the decision should be communicated to the petitioner. The writ petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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